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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. GUZMARO AMBRIZ JUAREZ, Defendant and Appellant.	H042402 (Santa Cruz County Super. Ct. No. F25974)

After the electorate approved Proposition 47 in November 2014, defendant Guzmaro Ambriz Juarez filed a petition to reduce his conviction for unlawful driving or taking of a vehicle (Veh. Code, § 10851)[1] to a misdemeanor and be resentenced accordingly. On appeal, defendant contends that section 10851 can be reduced to a misdemeanor under Proposition 47.[2] He also contends that his felony conviction violates his right to equal protection. We affirm the order.

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[1] All further statutory references are to the Vehicle Code unless otherwise stated.

[2] The issue of whether Proposition 47 applies to the offense of theft or unauthorized use of a vehicle (§ 10851) is currently before the California Supreme Court. (*People v. Page* (2015) 241 Cal.App.4th 714, review granted Jan. 27, 2016, S230793.)

I. Statement of the Case

In January 2014, defendant pleaded no contest to unlawful driving or taking of a vehicle (§ 10851, subd. (a)). The trial court suspended imposition of sentence and granted probation for three years on various conditions, including six months in county jail.

In May 2015, defendant filed a petition for resentencing pursuant to Penal Code section 1170.18. The trial court denied the petition the following month.

II. Statement of Facts

On December 5, 2013, Deputy Jose Zamora was on duty when he saw defendant driving a green Honda. A records check revealed that the vehicle was stolen. Deputy Zamora took defendant into custody. When the deputy inspected the interior of the vehicle, he noticed that the ignition had been tampered with. Leonardo Lopez, the owner of the vehicle, did not know defendant and he had not given him permission to take his vehicle.[3]

III. Discussion

Proposition 47 established procedures for petitions for reduced sentences for specified nonserious and nonviolent property and drug crimes by adding Penal Code section 1170.18. This statute provides in relevant part: "A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') had this act been in effect at the time of the offense may petition for a recall of sentence

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[3] At the hearing on the resentencing petition, defense counsel argued that the value of the vehicle was $335. However, as the prosecutor pointed out, defense counsel's proffer was based on the value for a 1990 Honda Civic two-door hatchback, while the vehicle in the present case was a "1994 four-door."

before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act." (Pen. Code, § 1170.18, subd. (a).) Penal Code section 1170.18, subdivision (b) provides that a court that receives such a petition shall resentence the petitioner "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety."

Though Penal Code section 1170.18 does not specifically refer to section 10851, defendant argues that the voters intended that the reforms enacted by Proposition 47 apply to violations of section 10851.

"[O]ur interpretation of a ballot initiative is governed by the same rules that apply in construing a statute enacted by the Legislature. [Citations.] We therefore first look to 'the language of the statute, affording the words their ordinary and usual meaning and viewing them in their statutory context.' [Citations.]" (*People v. Park* (2013) 56 Cal.4th 782, 796.) "'"When statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it." [Citation.]' [Citation.]" (*People v. Hendrix* (1997) 16 Cal.4th 508, 512.)

Penal Code section 1170.18, subdivision (a) does not identify section 10851 as one of the code sections amended or added by Proposition 47. Moreover, Proposition 47 did not amend language in section 10851, subdivision (a), which provides that a violation of the statute is punishable as either a felony or a misdemeanor. Defendant, however, focuses on Proposition 47's addition of Penal Code section 490.2, which states in relevant part: "Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor . . . ." (Pen. Code,

§ 490.2, subd. (a).) Defendant argues that Penal Code section 490.2 broadens the scope of petty theft to include a violation of section 10851.

Defendant's statutory interpretation is not persuasive. Penal Code section 490.2 amends the definition of grand theft, as set forth in Penal Code section 487[4] or any other provision of law, to include certain offenses that would have previously been grand theft to be petty theft. However, section 10851 is not included in Penal Code section 490.2, as Penal Code section 487 is. Nor can section 10851 be considered "any other provision of law defining grand theft." Section 10851[5] does not define the taking of a vehicle as grand theft and is much broader than statutes that prohibit theft. A theft is committed only if the defendant intends to permanently deprive the owner of his or her property (*People v. Abilez* (2007) 41 Cal.4th 472, 510), while a defendant can violate section 10851 if he or she either takes a vehicle with intent to steal it or by driving it with the intent only to temporarily deprive the owner of its possession. (*People v. Garza* (2005) 35 Cal.4th 866, 871.) Thus, Penal Code section 490.2 does not apply to defendant's conviction.

Defendant also argues that excluding section 10851 from relief under Proposition 47 would yield absurd results. He points out that "anyone who stole a car worth $950 (or less) and was charged under . . . section 10851 would face prison time, while anyone stealing the same car yet charged with section 487, subdivision (d) would be sentenced as

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[4] Penal Code section 487 defines grand theft based on the value or type of property. Subdivision (d)(1) of this statute refers to an automobile worth $950 or more. (Pen. Code, § 487, subd. (d)(1).)

[5] Section 10851, subdivision (a) provides in relevant part: "Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished . . . ."

a misdemeanant." However, "[a] criminal defendant has no vested interest ' "in a specific term of imprisonment or in the designation a particular crime receives." ' [Citation.] It is both the prerogative and the duty of the Legislature to define degrees of culpability and punishment, and to distinguish between crimes in this regard. [Citation.] Courts routinely decline to intrude upon the 'broad discretion' such policy judgments entail. [Citation.]" (*People v. Turnage* (2012) 55 Cal.4th 62, 74.)

Alternatively, defendant contends that it would violate his right to equal protection to interpret Penal Code section 490.2 to reduce vehicle theft violations under Penal Code section 487, subdivision (d)(1) to misdemeanors while leaving violations of section 10851 as felonies.

" 'Broadly stated, equal protection of the laws means "that no person or class of persons shall be denied the same protection of the laws [that] is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property and in their pursuit of happiness." [Citation.]' [Citation.] . . . [A] threshold requirement of any meritorious equal protection claim 'is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner. [Citation.]' [Citation.]" (*People v. Guzman* (2005) 35 Cal.4th 577, 591-592.)

" 'In considering whether state legislation violates the Equal Protection Clause of the Fourteenth Amendment . . . we apply different levels of scrutiny to different types of classifications. At a minimum, a statutory classification must be rationally related to a legitimate governmental purpose. [Citations.] Classifications based on race or national origin . . . and classifications affecting fundamental rights . . . are given the most exacting scrutiny. Between these extremes of rational basis review and strict scrutiny lies a level of intermediate scrutiny, which generally has been applied to discriminatory classifications based on sex or illegitimacy. [Citations.]' [Citations.]" (*People v. Wilkinson* (2004) 33 Cal.4th 821, 836 (*Wilkinson*).)

Even assuming that defendant could satisfy the similarly-situated requirement, his equal protection claim fails. In *Wilkinson*, *supra*, 33 Cal.4th 821, the defendant argued that his convictions of battery on a custodial officer violated equal protection, because statutes authorized greater punishment for battery on a custodial officer without injury than for battery on a custodial officer with injury. (*Id.* at p. 832.) In applying the rational basis test, the California Supreme Court rejected the defendant's challenge. *Wilkinson* stated that "neither the existence of two identical criminal statutes prescribing different levels of punishment, nor the exercise of a prosecutor's discretion in charging under one such statute and not the other, violates equal protection principles." (*Id.* at p. 838.) The issue before us was considered in *People v. Johnston* (2016) 247 Cal.App.4th 252 (*Johnston*). *Johnston* found a rational basis for the electorate's distinction in treatment between Penal Code section 487 and section 10851 under Proposition 47: "The electorate was not obligated to extend relief under the initiative to *all* similar conduct. It could instead move in an incremental way, gauging the effects of this sea change in penal law. Particularly given the insignificant numbers of vehicle thefts at issue in light of the present vehicle prices, the electorate could conclude this would not work an injustice." (*Johnston*, at p. 259.) We agree with the reasoning in *Johnston*.

Relying on *People v. Olivas* (1976) 17 Cal.3d 236, defendant contends that the present case involves a fundamental liberty interest and thus a compelling state interest must be shown to justify the omission of section 10851 from the reach of Proposition 47. *Wilkinson*, *supra*, 33 Cal.4th 821 rejected this interpretation of *Olivas*: "The language in *Olivas* could be interpreted to require application of the strict scrutiny standard whenever one challenges upon equal protection grounds a penal statute or statutes that authorize different sentences for comparable crimes, because such statutes always implicate the right to 'personal liberty' of the affected individuals. Nevertheless, *Olivas* properly has not been read so broadly." (*Wilkinson*, at p. 837.) As previously stated, *Wilkinson*

concluded the appropriate standard for such sentencing disparities was the rational basis standard. (*Id.* at p. 838.)

IV. Disposition

The order is affirmed.

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Mihara, J.

WE CONCUR:

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Elia, Acting P. J.

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Bamattre-Manoukian, J.

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